



The American Civil Rights Union

*"Protecting the civil rights
of all Americans."*

www.theacru.org

Founder

Hon. Robert B. Carleson
(1931-2006)

December 23, 2015

VIA FEDERAL EXPRESS

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Rafael Rodolfo Montalvo
Elections Administrator
Starr County
100 N. FM 3167
Ste. 206
Rio Grande City TX 78582

Dear Mr. Montalvo:

I am writing on behalf of the American Civil Rights Union (ACRU) to notify you that your county is in apparent violation of Section 8 of the National Voter Registration Act based on our research.

The ACRU is a nonpartisan, nonprofit organization dedicated to protecting the civil rights of all Americans by publicly advancing a Constitutional understanding of our essential rights and freedoms. As part of that mission, we work to improve the integrity of American elections by promoting and protecting the rights of legally qualified voters regardless of political party.

Voter rolls across America have been discovered that contain substantial numbers of ineligible voters, resulting in the possible disenfranchisement of legally eligible voters via ballot dilution that threatens to subvert the nation's electoral process.

Based on our comparison of publicly available information published by the U.S. Census Bureau and the federal Election Assistance Commission, your county is failing to comply with Section 8 of the NVRA. Federal law requires election officials to conduct a reasonable effort to maintain voter registration lists free of dead voters, ineligible voters and voters who have moved away. See 52 U.S.C. §§ 20503 and 20507.

In short, your county has significantly more voters on the registration rolls than it has eligible living citizen voters - approximately 109 percent of eligible living citizens are registered to vote.

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AMERICAN
OVERSIGHT

TX-STARR-19-0503-A-000001

The Attorney General of the United States may enforce the list maintenance requirements of Section 8 of NVRA to ensure that ineligible voters are not participating in the political process, but he has failed to do so. The ACRU has therefore taken on the task of notifying you of your county's violation.

This letter serves as the statutory notice to your county, as required by 52 U.S.C. § 20510(b), prior to the commencement of any lawsuit in order to enforce provisions of Section 8 of the National Voter Registration Act 52 U.S.C. § 20507.

It is our hope that your county will work quickly towards full compliance with 52 U.S.C. § 20507. If not, according to the federal statute, a lawsuit under the NVRA may be filed twenty (20) days after the receipt of this notice by a private party since the NVRA contains a private right of action to enforce the provisions of the statute. For any lawsuits initiated by a private party, an award of attorney's fees, expenses and costs incurred are available under 52 U.S.C. §20510(c).

if you believe the information reported by the Election Assistance Commission (EAC) for 2014 or to the Secretary of State currently is inaccurate, please state the basis for that belief. In particular, if the publicly available information cited above is no longer accurate, it would be helpful if you could provide:

- (a) up-dated registration data since the publication of the 2015 EAC report;
- (b) records obtained from Texas's district court clerks, United States District Court clerks or other sources regarding individuals who were ineligible to serve on juries because of a lack of American citizenship;
- (c) the number of ineligible voters purged by category (e.g., dead, duplicate, ineligible) and by date;
- (d) the source agency that provided the identifying information of the purged deceased;
- (e) the date of the deceased data, meaning how fresh the deceased data was that was provided by third-party agencies;
- (f) the number of notices sent to inactive voters since the publication of the EAC report including the date, scope and contents of any countywide mailing to all registered voters;
- (g) the names of the staff in your office responsible for conducting list maintenance obligations;
- (h) the number of ineligible voters removed for criminal conviction, if applicable, and the date of the most recent dataset containing criminal convictions against which you compared voter lists, including communications with other agencies regarding criminal convictions;
- (i) the total number of voters registered in your county as of the date of your response;
- (j) any records indicating the use of citizenship or immigration status for list maintenance activities, including but not limited to the SAVE database; and
- (k) all list maintenance records including federal voter registration forms containing citizenship eligibility questionnaires.

Section 8 also requires your county office to make available for public inspection "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." 52 U.S.C. § 20507(i). *See also, Project Vote v. Long*, Slip Op. 11-1809 (4th Cir. June 12, 2012) (NVRA requires local election officials to provide voter registration data to the public).

We would like to visit and meet with your office to discuss the possibility of implementing a plan which would cure what appears to be a violation of Section 8 of the NVRA.

We are hopeful that full compliance with our request will make a public inspection of your county's registration data unnecessary; and we are particularly hopeful that the data contained in your response might demonstrate that reasonable voter list maintenance is currently being performed in your county. If not, we would like to inspect your registration records at a time convenient to the responsible county officials prior to January 30, 2016.

Since steps necessary to ensure that only eligible voters are on the rolls will not involve significant effort or cost, we believe it is reasonable to expect your county's voter roll violations to be resolved before voting begins for the March 1, 2016 primary election and the November 2016 general election.

Thank you for your time and attention to this matter. Please feel free to call to arrange a convenient time to discuss and arrange an inspection by contacting me at the below phone number or email.

Sincerely,



Susan A. Carleson
Chairman / CEO
American Civil Rights Union

SOS
Monica Browne

703.566.2696
Susan.Carleson@theacru.org

CC: The Hon. Carlos Cascos
Texas Secretary of State
P.O. Box 12060
Austin, TX 78711-2060
Email: KIngram@sos.state.tx.us

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

AMERICAN CIVIL RIGHTS UNION,)
in its individual and corporate capacities,)
)
 Plaintiff)

v.)

Civil Action No. 7:16-cv-00103

ELECTION ADMINISTRATOR)
JOHN RODRIGUEZ,)
in his official capacity, and)
TEXAS SECRETARY OF STATE)
ROLANDO PABLOS, in his official)
capacity,)
 Defendants)

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is made by and between Plaintiff American Civil Rights Union (“Plaintiff” or “ACRU”), Defendant John Rodriguez, in his official capacity as Starr County Election Administrator (“Defendant Rodriguez”), and Defendant Rolando Pablos, in his official capacity as Texas Secretary of State (“Defendant Secretary of State”). In the remainder of this Agreement, Plaintiff, Defendant Rodriguez, and Defendant Secretary of State are collectively referred to as the “Parties.”

RECITALS

A. On March 4, 2016, Plaintiff filed this action against the Starr County Election Administrator, pursuant to Section 8 of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20507, to enforce obligations concerning voter registration list maintenance efforts in elections for federal offices (the “Litigation”).

B. On October 5, 2016, Plaintiff amended its suit to add the Texas Secretary of State as a named defendant.

C. The United States District Court for the Southern District of Texas has jurisdiction over this matter, pursuant to 28 U.S.C. § 1331 and 52 U.S.C. § 20510.

D. Defendant Rodriguez and Defendant Secretary of State deny that any violations of state or federal law have occurred with respect to Plaintiff's allegations in the Litigation.

E. Bona fide disputes and controversies exist among the Parties regarding matters at issue in the Litigation.

F. The Parties, through their respective counsel, have conferred and agreed this action should be settled without further delay and further expense. The Parties negotiated in good faith, and hereby agree this Agreement is an appropriate resolution of the claims alleged in Plaintiff's complaint.

G. Nothing in this Agreement, or any action taken under this Agreement, is an admission of liability—nor should it be interpreted as an admission of liability—by Defendant Rodriguez or Defendant Secretary of State, or by any current or former employee, agent, or representative of Defendant Rodriguez or Defendant Secretary of State.

TERMS AND CONDITIONS

In consideration of the recitals set forth above, the mutual promises, agreements, covenants, and provisions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree that the Litigation shall be settled and compromised in full upon the following terms and conditions:

1. Removal of Deceased Registrants and Report

A. **Removal Procedures.** Annually, Defendant Rodriguez shall use reasonable diligence to search for deceased registrants, and initiate an investigation, pursuant to Section 16.033 of the Texas Election Code. Such reasonable diligence shall include initiating independent analyses, including sending letters of examination to persons allegedly who have died. Reasonable

diligence shall also include regularly reviewing obituaries in the local newspaper. Upon receipt of such information, Defendant Rodriguez shall either cancel the registration, pursuant to Section 16.031(b) of the Texas Election Code, or initiate an investigation, pursuant to Section 16.033 of the Texas Election Code, to ascertain the true status of each suspected deceased registrant. Plaintiff shall provide reasonable assistance to Defendant Rodriguez regarding database sorting tools upon request and without cost.

B. Report. For a period of two years, to begin on January 1, 2019, Defendant Rodriguez shall inform counsel for the Plaintiff in writing as to the total number of registrants removed as a result of the above actions. This data shall be provided in summary form and shall be provided even if the number of registrants identified or removed is zero.

2. Removal of Duplicate Registrants and Report

A. Removal Procedures. Defendant Rodriguez shall diligently and promptly act upon any information received from the Secretary of State regarding “weak match” duplicates. To the extent such information is sent by the Secretary of State, Defendant Rodriguez shall undertake to determine whether the potential duplicate registrations are, indeed, duplicates from the same person. Within 60 days of receiving information from the Secretary of State, Defendant Rodriguez shall act to resolve each “weak match” duplicate received from the Secretary of State.

Pursuant to Section 18.0681(a) of the Texas Election Code, the Secretary of State shall periodically compare the information regarding voters maintained as part of the statewide computerized voter registration list to determine whether any voters have more than one voter registration record on file. If the Secretary of State determines that a voter on the registration list has more than one registration record on file based on a strong match, the Secretary of State shall, if applicable, send notice to Defendant Rodriguez pursuant to Section 18.0681(d) of the Texas Election Code. Upon receipt of strong match duplicate-registrant information from the Secretary

of State, Defendant Rodriguez shall take action consistent with the procedures identified in Section 18.0681(d) of the Texas Election Code. Plaintiff shall provide reasonable assistance to Defendant Rodriguez regarding database sorting tools upon request and without cost.

B. Report. For a period of two years, to begin on January 1, 2019, Defendant Rodriguez shall inform counsel for the Plaintiff in writing as to (1) the total number of registrants removed as a result of the above actions; (2) the total number of registrants placed in suspense as a result of the above actions. This data shall be provided in summary form and shall be provided even if the number of identified or removed registrants is zero.

3. Jury Disqualification Information

Defendant Rodriguez shall seek to obtain jury excusal and/or disqualification information from the Clerk of the Court regarding both state and federal court cases for residents of Starr County. Defendant Rodriguez shall review such information and identify all individuals who have been excused or disqualified from jury duty because they are deceased or are not a U.S. citizen, as required under Texas law. Defendant Rodriguez shall initiate an investigation, including mailing a notice letter to the respective individual, pursuant to Sections 16.033 and 16.0332 of the Texas Election Code of any individual so identified, and act to correct or cancel the registration records of any individual who is determined to be ineligible to vote.

Defendant Rodriguez shall also review jury excusal and/or disqualification information from the Clerk of the Court to identify individuals who have moved from Starr County. Such review shall be based, at minimum, on address information reported by the individual to the Clerk of the Court, and on information provided by the United States Postal Service on jury summonses that were returned to the Clerk of the Court as undeliverable, to the extent that such information is provided to Defendant Rodriguez. As appropriate, for any individual identified as potentially having moved outside Starr County, Defendant Rodriguez shall follow the procedures provided

by Section 62.114(d) of the Texas Government Code, or promptly send a written notice requesting confirmation of the registrant's current address, pursuant to Section 15.051 of the Texas Election Code. Defendant Rodriguez shall promptly take action on any responses to such confirmation notices pursuant to Section 15.053 of the Texas Election Code, or shall place the registrant on the suspense list pursuant to Section 15.081(a) of the Texas Election Code, if applicable.

Defendant Rodriguez shall work with the Clerk of the Court to ensure prompt receipt of jury excusal and/or disqualification information in the future.

4. National Change of Address Database

As part of the biennial mass mailing of voter registration cards required by Section 14.001 of the Texas Election Code, Defendant Rodriguez shall obtain access to the United States Postal Service National Change of Address Database (NCOA Database) on or before June 1 of each odd-numbered year. Pursuant to 52 U.S.C. § 20507(c)(1)(A), Defendant Rodriguez shall obtain change of address information supplied by the Postal Service in the NCOA Database, and then compare that data to the Starr County voter registration list to identify registrants whose addresses may have changed. These comparisons may be conducted by retaining the services of a commercial vendor that has access to the NCOA Database. If it appears from this information that the registrant has moved to an address within Starr County, Defendant Rodriguez shall promptly send a written notice requesting confirmation of the registrant's current address, pursuant to Section 15.051 of the Texas Election Code. Defendant Rodriguez shall promptly take action on any responses to such confirmation notices pursuant to Section 15.053 of the Texas Election Code.

5. Prompt Resolution of Ineligible or Potentially Ineligible Registrants

Defendant Rodriguez shall promptly respond to list maintenance directives from the Texas Secretary of State to take action regarding potentially ineligible registrants. Defendant Rodriguez shall remove registrants who either do not respond within the time permitted by law to a notice of

investigation, pursuant to Section 16.033 of the Texas Election Code, or who respond to such a notice confirming their ineligibility to vote in Starr County.

Within sixty (60) days of this Agreement being fully signed by all Parties, Defendant Rodriguez shall ensure the resolution of all pending action items received from the Secretary of State regarding potential ineligible registrants. For all future list maintenance directives from the Secretary of State, Defendant Rodriguez shall resolve them within sixty (60) days after receipt from the Secretary.

6. Written Procedures

Defendant Rodriguez shall create and implement written procedures, with assistance from the Texas Secretary of State upon request by Defendant Rodriguez, regarding standard list maintenance procedures for the Office of the Election Administrator. Such written procedures shall be provided to all staff in the Office of the Election Administrator and shall be made available for inspection upon request from members of the public. Such written procedures shall include the following important points:

- A. Staff shall ensure that original registrations are complete, including that the citizenship checkbox has been checked affirmatively and a residential address has been provided;
- B. Staff shall ensure that proper record keeping requirements under the Texas Election Code are followed; and
- C. Staff shall ensure that action items from the Secretary of State are addressed within sixty days of receipt from the Secretary.

7. Retention and Availability of List Maintenance Records

Defendant Rodriguez shall retain voter registration and list maintenance records related to the items set forth in this Agreement for the time periods required by Texas and federal law. The records retained shall include all materials and documents necessary to the list maintenance obligations under the NVRA and state law. Defendant Rodriguez shall provide Plaintiff access to

list maintenance records, subject to availability, pursuant to the NVRA and Texas law, upon reasonable notice.

8. Secretary of State Training

For a period of three (3) years, to begin on January 1, 2019, the Texas Secretary of State shall provide annual classroom training regarding voter registration list maintenance to appropriate personnel of Defendant Rodriguez's office. The Secretary of State's training for Defendant Rodriguez's staff will be held in Austin, Texas, in conjunction with—but separate from—the Secretary of State's annual Election Law Seminar for County Election Officials. The Secretary of State's training for Defendant Rodriguez's staff shall include a review of the manual or handbook created for the appropriate election personnel in Defendant Rodriguez's office.

9. Right to Cure

If there is cause to believe that a breach of this Agreement has occurred, Plaintiff shall give written notice of the specific alleged breach to Defendant Rodriguez and Defendant Secretary of State, and permit the breaching party sixty (60) calendar days to remedy the breach before Plaintiff takes any action, subject to any Texas or federal law, including but not limited to any law that may prevent cancellation of a voter prior to an election.

10. Fees and Costs

Defendant Rodriguez shall pay Plaintiff \$55,000 for Plaintiff's fees and costs incurred in the litigation of this case. Plaintiff shall provide Defendant Rodriguez with its IRS Form 1099, and Defendant Rodriguez shall make payment within sixty (60) calendar days of the date of this Agreement being fully signed by all Parties. Defendant Rodriguez's payment of \$55,000 to Plaintiff is inclusive of and offsets any and all photocopying and related charges incurred by Plaintiff in connection with this Litigation. The Parties agree that other than Defendant

Rodriguez's payment of \$55,000 to Plaintiff, each party will bear its own fees and costs incurred in this Litigation.

11. Dismissal of Claims

The Parties understand and agree that the enforceability and validity of this Agreement are expressly conditioned upon entry of an order by the United States District Court for the Southern District of Texas, McAllen Division, dismissing Plaintiff's claims in their entirety with prejudice.

12. Necessary Approvals

The terms of this Agreement are subject to approval by the Office of the Attorney General of Texas. The Parties understand and agree that the Agreement is not final until such approval has been obtained.

13. Releases

Plaintiff hereby knowingly and voluntarily agrees to fully, finally, and forever unconditionally release, acquit, and discharge Defendant Rodriguez and Defendant Secretary of State, their agents and employees, including their attorneys and former employees (the "Releasees"), from any and all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, losses, debts, expenses (including attorneys' fees and costs incurred), claims or rights under any and all federal and state laws, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity, whether known or not, which Plaintiff now has or ever has had against Defendant Rodriguez, Defendant Secretary of State, and Releasees related to the claims asserted in this Litigation, up to and including the date the Parties sign the Agreement. Notwithstanding the foregoing, Plaintiff may bring an action to enforce the provisions of this Agreement.

14. Authority

The individuals whose signatures are affixed to this Agreement in a representative capacity represent and warrant that they are authorized to execute the Agreement on behalf of, and to bind, the entity on whose behalf the signature is affixed.

15. Other Acknowledgments

The Parties acknowledge they have had the right to consult with an attorney before signing this Agreement. The Parties represent and warrant they have read this Agreement and reviewed it with their counsel, and further represent and warrant that they have executed this Agreement of their own free will and accord without further representation of any kind or character not expressly set forth herein.

This Agreement shall be construed as if all Parties jointly prepared it, and any uncertainty or ambiguity in the Agreement shall not be interpreted against any one Party.

16. Severability

The provisions of this Agreement are severable. If any part of this Agreement is held to be illegal, invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and shall remain in effect and continue to be binding upon the Parties.

17. Notice

All notices required by this Agreement shall be sent by certified or registered mail, return receipt requested, or by hand delivery, as follows:

If to Plaintiff ACRU:

J. Christian Adams
Public Interest Legal Foundation
32 E. Washington, Suite 1675
Indianapolis, Indiana 46204

If to Defendant Rodriguez:

Philip B. Arnold
Allison, Bass & Magee, L.L.P.
A.O. Watson House
402 W. 12th Street

Austin, Texas 78701

If to Defendant Secretary of State: Adam N. Bitter
Assistant Attorney General
Office of the Attorney General
General Litigation Division
P.O. Box 12548
Austin, Texas 78711-2548

18. Final Agreement

This Agreement contains the entire understanding of the Parties hereto, supersedes any and all prior agreements or understandings, statements, promises, or inducements contrary to the terms of this Agreement, and shall not be amended except by written instrument expressly referring to this Agreement and signed by all of the Parties hereto.

19. Binding Nature of Agreement

This Agreement is binding on Plaintiff, Defendant Rodriguez, and Defendant Secretary of State, their successors in office, employees, representatives, delegates, agents, assigns, and all persons acting on their behalf, to the extent permitted by law or required by this Agreement.

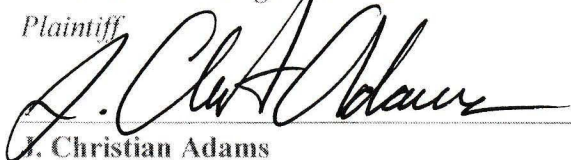
[Remainder of page left intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned, having represented and warranted their authority to enter into and execute this Agreement, have executed this Agreement effective as of the last date written below.



American Civil Rights Union

Plaintiff

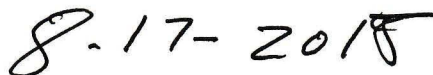


J. Christian Adams

Counsel for Plaintiff American Civil Rights Union



DATE



DATE

Election Administrator John L. Rodriguez

Defendant

DATE

Philip B. Arnold

Counsel for Defendant Election Administrator

John L. Rodriguez

DATE

[Signatory for Texas Secretary of State]

[Title]

Texas Secretary of State

Defendant

DATE

Adam N. Bitter

Counsel for Defendant Texas Secretary of State

DATE

IN WITNESS WHEREOF, the undersigned, having represented and warranted their authority to enter into and execute this Agreement, have executed this Agreement effective as of the last date written below.

American Civil Rights Union
Plaintiff

DATE

J. Christian Adams
Counsel for Plaintiff American Civil Rights Union

DATE

Election Administrator John L. Rodriguez
Defendant

DATE

Philip B. Arnold
*Counsel for Defendant Election Administrator
John L. Rodriguez*

DATE

[Signatory for Texas Secretary of State]
[Title]
Texas Secretary of State
Defendant

DATE

Adam N. Bitter
Counsel for Defendant Texas Secretary of State

DATE

IN WITNESS WHEREOF, the undersigned, having represented and warranted their authority to enter into and execute this Agreement, have executed this Agreement effective as of the last date written below.

American Civil Rights Union
Plaintiff

DATE

J. Christian Adams
Counsel for Plaintiff American Civil Rights Union

DATE

Election Administrator John L. Rodriguez
Defendant

DATE

Philip B. Arnold
*Counsel for Defendant Election Administrator
John L. Rodriguez*

DATE

[Signatory for Texas Secretary of State]
[Title] *Secretary of State*
Texas Secretary of State *ROLANDO R. PABLOS*
Defendant

DATE

ANBIA
Adam N. Bitter
Counsel for Defendant Texas Secretary of State

Sept. 4, 2018
DATE